

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

SUSAN M. HILTON,

Plaintiff,

v.

CIV 15-0116 MV/KBM

NANCY A. BERRYHILL,  
Acting Commissioner of Social Security,<sup>1</sup>

Defendant.

**ORDER AWARDING EAJA FEES**

The Chief Magistrate Judge filed her Proposed Findings and Recommended Disposition on November 22, 2016. *See Doc. 36*. The proposed findings notify the parties of their ability to file objections and that failure to do so waives appellate review. As of today, no objections have been filed. Moreover, the Court expressly finds that an award of fees in the amount requested is reasonable in this case.

Wherefore,

**IT IS HEREBY ORDERED** that Chief Magistrate Judge Molzen's Proposed Findings and Recommended Disposition (*Doc. 36*) is ADOPTED, and Plaintiff's Motion for Attorney Fees and Costs Pursuant to the Equal Access to Justice Act (*Doc. 29*) is granted.

**IT IS THEREFORE ORDERED** that attorney fees are awarded under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), payable to Plaintiff in the amount of

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<sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is therefore substituted for former Acting Commissioner Carolyn W. Colvin as the defendant in this suit.

\$6,729.80 and costs in the amount of \$400.00. See *Astrue v. Ratliff*, 130 U.S. 2521 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

**IT IS FURTHER ORDERED** that, if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10<sup>th</sup> Cir. 1986).

  
UNITED STATES DISTRICT JUDGE